



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



269606

REPLY TO THE ATTENTION OF:

OCTOBER 28, 2005

RRG Clayton Chemical Site - Soils

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RRG/CLAYTON CHEMICAL SITE PRP Group
c/o: Sharon R. Newlon, Esq.
Dickinson Wright, PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48226


Re: Administrative Settlement Agreement and Order on Consent for Removal Action for the
RRG/Clayton Chemical Soils Site

Dear Madam:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent issued for this Site pursuant to Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9604, 9607 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Agreement, please contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 or Kevin Turner, On-Scene Coordinator, at (618) 997-0115.

Sincerely yours,


Richard C. Karl, Director
Superfund Division

Enclosure

cc: State Agency Superfund Program Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

RESOURCE RECOVERY GROUP/
CLAYTON CHEMICAL SITE
Sauget, Illinois

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. V-W '05 -C-829

Respondents:

Listed in Attachments A and B

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA"), Respondents, and the Settling Federal Agency. This Settlement Agreement provides for the performance of removal actions by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at One Mobile Avenue in Sauget, Illinois, the "Resource Recovery Group/Clayton Chemical Site" or the "Site."

1.1 This Settlement Agreement also provides for resolution of the claims of Respondents which have been or could have been asserted against the United States with regard to this Site as provided in this Settlement Agreement.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104a, 107, 122a, and 122h of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604a, 9607, 9622a, and 9622h, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Illinois (the "State") of this action.

4. U.S. EPA, Respondents, and the Settling Federal Agency recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents and the Settling Federal Agency in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents and the Settling Federal Agency do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents and the Settling Federal Agency agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and the Settling Federal Agency and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

There shall be two classes of Respondents under this Settlement Agreement:

A. The Respondents who are listed in Attachment A hereto shall be designated “Performing Respondents” and shall be obligated to comply fully with and be bound by all the terms and conditions of this Settlement Agreement, except those terms and conditions that apply solely to Non-Performing Respondents.

B. Those Respondents who are listed in Attachment B hereto have agreed solely to contribute sums to Performing Respondents towards the costs of complying with this Settlement Agreement, pursuant to a private settlement agreement, and shall be designated “Non-Performing Respondents.” Such Non-Performing Respondents shall be obligated to comply with and shall receive the protection of all provisions of this Settlement Agreement, except, in general, Sections VII to IX. Any protection provided to the Non-Performing Respondents by this Settlement Agreement shall apply only upon full compliance with the Settlement Agreement by Performing Respondents.

6. Respondents are jointly and severally liable for carrying out all activities required of them by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement, other than requirements of the Settling Federal Agency.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Agreement and Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. “Administrative Settlement Agreement” or “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

b. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. “Effective Date” shall be the effective date of this Settlement Agreement as

provided in Section XXVIII.

d. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the U.S. EPA incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid after that date.

e. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

g. "Parties" shall mean U.S. EPA, Respondents, and the Settling Federal Agency.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the U.S. EPA paid at or in connection with the hazardous soils portion of the Site beginning January 1, 2001 to the Effective Date of this Settlement Agreement which have not previously been reimbursed.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Respondents" shall mean those Parties identified in Attachments A and B.

k. "Settling Federal Agency" shall mean the United States Environmental Protection Agency Region 7, including all of its components, which is resolving any claims which have been or could be asserted against it with regard to this Site as provided in this Settlement Agreement.

l. "Site" shall mean the Resource Recovery Group(RRG)/Clayton Chemical Superfund Site, encompassing approximately seven (7) acres, located at One Mobile Avenue in Sauget, Illinois, and depicted generally on the map attached as Attachment C.

m. "State" shall mean the State of Illinois.

n. "United States" shall mean the United States of America, including all of its

departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any federal natural resources trustee.

o. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

p. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under 415 ILCS 5/3.215.

q. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

- a. The RRG/Clayton Chemical Site is located at 1 Mobile Avenue, Sauget, Illinois. The Site lies in a flood plain protected by a river levee. The Site is approximately seven acres in size and is located in a highly industrialized area. See map at Attachment C.
- b. Prior to 1961 the Site was owned by GM&O Railroad and the Site was used to repair and maintain railroad equipment.
- c. In 1961, Clayton Chemical Company leased the facility to recycle and recover used solvents and waste oil.
- d. On May 12th 1981, the Village of Sauget deeded the Site property to the Clayton Chemical Company. Clayton Chemical Company continued operating a waste oil and solvent recycling business from the Site. In November of 1996, Clayton Chemical Company discontinued operations at the Site.
- e. Between 1996 and 1998, the Site was operated as a waste oil and spent solvents recycling and recovery business by a new entity, the Resource Recovery Group (RRG).
- f. Illinois Environmental Protection Agency (IEPA) Resource Conservation and Recovery Act (RCRA) hazardous waste records reviewed by U.S. EPA indicated that between 1995 and 1998, the RRG/Clayton Chemical facility received hazardous substances for processing from or was owned or operated by, among others, the Respondents designated as Potentially Responsible Parties (PRPs) at the Site in the U.S. EPA, March 6, 2002,

General Notice Letter.

- g. In 1998, IEPA denied the RCRA permit of RRG, and the RRG/Clayton Chemical facility ceased acceptance of hazardous substances.
- h. The hazardous substances shipped to the Site (between 1995 and 1998) included caustics, corrosives, ignitable hazardous liquids and solids, solvents, acids, liquid fuels, and dry cleaning waste materials.
- i. During June 5-7, 2001, U.S. EPA conducted a site assessment at the Site. Twenty-two soil samples, and ten groundwater samples were taken during the site assessment. Sampling of some of the containerized liquids at the Site revealed that they still contained hazardous substances, including, but not limited to, hazardous substances as described in the IEPA RCRA hazardous waste manifests for certain Respondents. The U.S. EPA site assessment indicated Site soil contamination based upon the release of the types of Hazardous Substances (or residual remainders) shipped by the previously mentioned Respondent generators.
- j. In Fall 2002, Mr. Dennis Ballinger of Dennis Ballinger Real Estate/Globe Tax Service, Decatur, IL, purchased a Sheriff's Tax Sale deed to the Site property in a St. Clair County (IL) tax sale.
- k. On October 8, 2002, U.S. EPA issued a CERCLA Section 106 Administrative Order on Consent (AOC) for removal of hazardous liquid substances stored in drums, tanks, containers and other vessels at the Site. The removal was performed by a PRP liquids removal group composed of the Respondents identified in subparagraph f. The PRP liquids removal group performed the removal between 2002 and 2004.
- l. Pursuant to the October 2002 AOC, the PRP liquids removal group also researched all available Site records and additional IEPA records and created an August 2004 PRP waste report for the present soil removal action. Records from on-Site and further IEPA waste shipment records (for 1987 to 1998), and 2002 St. Clair county tax records, revealed that the Respondents identified in subparagraphs f and j sent waste to or maintained an ownership or operational interest in the Site facility. The August 2004 PRP waste report was reviewed by U.S. EPA and developed into the November 2004 list of Respondents that received CERCLA General Notice Letters for the present soil removal action.
- m. On November 22, 2004 and February 15, 2005, U.S. EPA issued General Notice letters to Respondents identified as generator or owner/operator PRPs (as described in subparagraphs "j" and "l") for the hazardous soil

removal planned for the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

- a. The RRG/Clayton Chemical Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent and the Settling Federal Agency is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of the response action and for response costs incurred and to be incurred at the Site. The Respondents identified in Attachments A and B and the Settling Federal Agency, among others, arranged for treatment or disposal, or transported for treatment or disposal, hazardous substances at the RRG/Clayton Chemical Site. RRG and Clayton Chemical Company, as well as Mr. Dennis Ballinger, are or were the owners or operators of the Site at the time of release or threatened release. Each Respondent and the Settling Federal Agency therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as "arrangers" at, or as "owners/operators" of, the RRG/Clayton Chemical Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).
- f. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:
 - i. Actual or potential exposure to nearby human populations,

animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of RCRA metals, lead, chromium, arsenic in the soil, PCBs in the soil, and historic leakage from containerized hazardous and ignitable materials into the soil of the Site.

The Site Assessment revealed several areas where bulk waste was dumped directly into the ground. During the Site Assessment, 59 test pits were dug throughout the property.

The laboratory analytical results for both soil and groundwater, as stated above, further documented that actual releases to the environment have occurred.

- ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of porous sandy area soils that are suitable for run-off and could move contaminants to groundwater or drinking water.
- iii. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of ignitable and hazardous solid waste materials, and in some cases leaking, insecure or deteriorated containment units.
- iv. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of RCRA metals, ignitable compounds and PCBs in Site soils.

Analytical results indicated that both surface and subsurface soils at the RRG/Clayton Chemical site have been impacted by elevated concentrations of various heavy metals, PCBs, and ignitable compounds. The contamination exists on the ground surface where it may easily migrate via surface water runoff or become airborne. Although an extensive geological study of the site has not been performed, area soils appear to be of a porous, sandy nature, which would facilitate contamination migration to groundwater.

- v. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of the potential for heavy

rains and large-scale area flooding in the Mississippi River flood plain.

The Site Assessment documented that surface contamination could migrate off site via heavy rains, flooding or severe winds. Heavy rains may cause further migration of contaminants off site. Winds could cause dust particles containing heavy metals and PCBs to migrate off site. These weather conditions could result in a continued release of the hazardous wastes described herein to the surrounding soil, air and surface water.

- vi. Threat of fire or explosion; this factor is present at the Site due to the existence of leaking and ignitable RCRA hazardous waste materials in solid form, ignitable soil compounds, and the potential for severe wind storms or tornados.
- vii. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Settlement Agreement at the Site because of the referral in February 2001 of the site from IEPA to U.S. EPA.

Illinois EPA requested U.S. EPA, Region 5, assistance with the RRG/Clayton Chemical site. The State of Illinois does not have the funds to undertake removal of the hazardous wastes and hazardous substances found at this site.

- g. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment, 42 U.S.C. § 9604(a)(1), and, if carried out in compliance with the terms of this Agreement, will be considered consistent with the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a).

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Agreed and Ordered that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

11. Performing Respondents shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name and qualifications of each contractor within 15 calendar days of the Effective Date. Performing Respondents shall also notify U.S. EPA of the name and qualifications of all other contractors or subcontractors retained to perform the Work at least 15 calendar days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Performing Respondents. If U.S. EPA disapproves of a selected contractor, Performing Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

12. Within 5 business days after the Effective Date, Performing Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Performing Respondents required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Performing Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by Performing Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by all Performing Respondents.

13. U.S. EPA has designated Kevin Turner of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 8588 Rt. 148, Marion, IL 62959. All Performing Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

14. U.S. EPA and Performing Respondents shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Performing Respondents, and Performing Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

15. The Work to be performed pursuant to the Settlement Agreement is set out in the Work Plan (included as Appendix A) and, in addition and as part of the Work, Performing Respondents shall:

- a. Develop and implement a Site Health and Safety Plan, subject to paragraph 17 below, including an air monitoring plan and Site contingency plan;
- b. Develop and implement a Site security plan;
- c. Characterize, remove and properly dispose of hazardous substances and wastes (solids and contaminated soils) located at the Site in accordance with the Work Plan included as Appendix A and U.S. EPA's Off-Site Rule (40 CFR 300.440);
- d. Conduct such other activities as are required in Paragraphs 16-21 of this Settlement Agreement; and,
- e. Conduct and perform under the supervision of the OSC such other activities as are necessary and incidental to the implementation and completion of the Work.

The nature of this removal action will eliminate the need for any post removal Site control as detailed in the provisions of Section 300.415(l) of the NCP.

16. **Work Plan Implementation.**

- a. Performing Respondents shall implement the Work Plan attached hereto in accordance with the schedule approved by U.S. EPA. The Work Plan, the schedule, and any subsequent modifications are incorporated into and fully enforceable under this Settlement Agreement.
- b. Performing Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Performing Respondents shall not commence implementation of the Work Plan attached hereto until receiving written U.S. EPA approval pursuant to Paragraph 16(b).

17. **Health and Safety Plan.** Within 10 business days after the Effective Date,

Performing Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Performing Respondents shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

18. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Performing Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Performing Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Performing Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.
- b. Upon request by U.S. EPA, Performing Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Performing Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- c. Upon request by U.S. EPA, Performing Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Performing Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter

notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Performing Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Performing Respondents' implementation of the Work.

19. Reporting.

- a. Performing Respondents shall submit a written progress report, either by hard copy or electronically, to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the effective date of this Settlement Agreement until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- b. Performing Respondents shall submit 2 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Performing Respondents shall submit such documents in electronic form.
- c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

20. Final Report. Within 60 calendar days after completion of all Work required by Section VIII of this Settlement Agreement, Performing Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a

discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

21. Off-Site Shipments.

a. Performing Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Performing Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Performing Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Performing Respondents following the award of the contract for the removal action. Performing Respondents shall provide the information required by Paragraph 21(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Performing Respondents shall obtain

U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Performing Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

22. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

23. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Performing Respondents shall use their best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Performing Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Performing Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Performing Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Performing Respondents shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

24. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

25. Performing Respondents shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Performing Respondents shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

26. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 CFR § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 CFR Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

27. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, upon U.S. EPA request, Respondents shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

29. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

30. At the conclusion of this document retention period, Respondents shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents may assert that certain documents, records and other information are privileged

under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, upon U.S. EPA request, Respondents shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since written notification of November 22, 2004, of potential liability by U.S. EPA or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

31.1. The United States acknowledges that the Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XII. COMPLIANCE WITH OTHER LAWS

32. Performing Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 CFR §§ 300.400(e) and 300.415(j). In accordance with 40 CFR § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Performing Respondents shall identify ARARs in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Respondents shall immediately take all appropriate action. Performing Respondents shall take these actions in accordance with all applicable provisions of this Settlement

Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Performing Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Performing Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Site, Performing Respondents shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Performing Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

35. The OSC shall be responsible for overseeing Performing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

36. Payment for Past Response Costs.

a. Within 60 days of receipt of U.S. EPA's bill for Past Response Costs, which shall be in the amount of \$491,518.63, Performing Respondents shall pay to U.S. EPA all Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Performing Respondents by U.S. EPA Region 5, and shall be accompanied by a statement identifying the name and address of every party making payment, the Site name, and Site/Spill ID Number B5X4, and the U.S. EPA docket number for this action.

b. At the time of payment, Performing Respondents shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Tom Turner, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Performing Respondents pursuant to Paragraph 36(a) shall be deposited in the Resource Recovery Group/Clayton Chemical Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

37. Payments for Future Response Costs.

a. Performing Respondents shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Performing Respondents a bill requiring payment that consists of an Itemized Cost Summary. Respondents shall make all payments within 60 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 39 of this Settlement Agreement.

b. Performing Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Performing Respondents by U.S. EPA Region 5, and shall be accompanied by a statement identifying the name and address of every party making payment, the Site name, and Site/Spill ID Number B5X4, and the U.S. EPA docket number for this action.

c. At the time of payment, Performing Respondents shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Tom Turner, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

d. The total amount to be paid by Performing Respondents pursuant to Paragraph 37(a) shall be deposited in the Resource Recovery Group/Clayton Chemical Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

38. In the event that the payment for Past Response Costs is not made within 60 days of the Performing Respondents' receipt of the bill, or the payments for Future Response Costs are not made within 60 days of Performing Respondents' receipt of a bill, Performing Respondents shall pay Interest on the unpaid balance. The Interest on Past and Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Performing Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

39. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is not consistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 37 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 37(c) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

39.1 As soon as reasonably practicable after the effective date of this Settlement Agreement, and consistent with Subparagraph 39.1(a)(ii), the United States, on behalf of the Settling Federal Agency, shall:

- a.
 - (i) Pay to the RRG/Clayton Chemical Site Special Account \$100.00, in reimbursement of Past and Future Response Costs.
 - (ii) If the payment to the RRG/Clayton Chemical Site Special Account required by this subparagraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Settlement Agreement, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.
 - (iii) The total amount to be paid to Resource Recovery Group/Clayton Chemical Site Special Account shall be retained and used to conduct or finance response actions at or in connection with the Site, or shall be transferred by US EPA to the US EPA Hazardous Substance Superfund.

- b. Pay to the Respondents \$1,100.00 in reimbursement of the Respondents' past response costs and future response costs, in the form of a check or checks made payable to Dickinson Wright PLLC (with a notation of "RRG/Clayton Soils Trust Fund") and sent to Sharon R. Newlon, or by Automatic Clearing House Electronic Funds Transfer in accordance with instructions provided by the Respondents.

39.2. In the event that payments required by Paragraph 39.1 are not made within 30 days of the effective date of this Settlement Agreement, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Settlement Agreement and accruing through the date of the payment.

39.3. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that the Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVI. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

41. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objections within 10 calendar days of such action, unless the objections have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies. U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

42. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

43. Performing Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Performing Respondents, or of any entity controlled by Performing Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Performing Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Performing Respondents shall notify U.S. EPA orally within 48 hours of when Performing Respondents first knew that the event might cause a delay. Within 7 calendar days thereafter, Performing Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Performing Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Performing Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Performing Respondents an extension of time for performance. Performing Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

45. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Performing Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will

notify Performing Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

46. Performing Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Performing Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by U.S. EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

47. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 47(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$3,000.00	31st day and beyond

b. Compliance Milestones

- i. Confirmation of Site Access
- ii. Initiation of the Work
- iii. Completion of the Work

48. **Stipulated Penalty Amounts - Reports.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports and other written documents pursuant to Paragraphs 17, 19, and 20 of this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$3,000.00	31st day and beyond

49. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall

not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Performing Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 41 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

50. Following U.S. EPA's determination that Performing Respondents have failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Performing Respondents written notification of the failure and describe the noncompliance. U.S. EPA may send Performing Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Performing Respondents of a violation.

51. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Performing Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Performing Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number B5X4, the U.S. EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to U.S. EPA as provided in Paragraph 36(b).

52. The payment of penalties shall not alter in any way Performing Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

53. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

54. If Performing Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Performing Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 51. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Performing Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section

107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Performing Respondents violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106a of CERCLA, 42 U.S.C. §9606a. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

55. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

55.1. Except as specifically provided in Section XX (Reservation of Rights by EPA), EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant shall take effect upon receipt by EPA of all payments required by Section XV (Payment of Response Costs). This covenant is conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Settlement Agreement. This covenant extends only to the Settling Federal Agency and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

56. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA

also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

57. The covenant set forth in Section XIX above do not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents and the Settling Federal Agency with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents or the Settling Federal Agency to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to performance of the work and for recovery of past response costs and future response costs.

XXI. COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCY

58. Respondents covenant not to sue and Respondents and the Settling Federal Agency covenant and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution,

the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 60 (Waiver of Claims), these covenants shall not apply in the event the United States brings a cause of action or issues an Agreement pursuant to the reservations set forth in Paragraph 57 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

59. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR § 300.700(d).

60. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

61. The waiver in Paragraph 60 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against the Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA determines:

- a. that such person has failed to comply with any U.S. EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and the conviction has not been vitiated on appeal or otherwise; or
- b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response

action or natural resource restoration at the Site.

XXII. OTHER CLAIMS

62. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

63. Except as expressly provided in Section XXI, Paragraphs 60 and 61 (*De Micromis and De Minimis* Waivers) and Section XIX (Covenant Not To Sue By U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Section 107 of CERCLA, 42 U.S.C. § 9607.

64. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

65. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents and the Settling Federal Agency are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

66. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents and the Settling Federal Agency have resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

67. Except as provided in Section XXI of this Settlement Agreement (Covenants by Respondents and Settling Federal Agency), nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain

additional response costs or response action and to enter into settlements that provide contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

68. Respondents shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agency), its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States (with the exception of the Settling Federal Agency) all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

69. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

70. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

71. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

72. If Performing Respondents seek permission to deviate from any approved work

plan or schedule, Performing Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Performing Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 71.

73. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Performing Respondents shall relieve Performing Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

74. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice to Performing Respondents. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Performing Respondents, provide a list of the deficiencies, and require that Performing Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Performing Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Performing Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. SEVERABILITY/INTEGRATION/ATTACHMENTS

75. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachments are incorporated into this Settlement Agreement: Attachments A-C, Appendix A.

XXVIII. EFFECTIVE DATE

76. This Settlement Agreement shall be effective upon receipt by Respondents of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

Resource Recovery Group/Clayton Chemical Site (soil)
1 Mobile Avenue, Sauget, Illinois

It is so AGREED and ORDERED this 27th day of OCTOBER, 2005

BY: Richard C. Karl
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5



U.S. Department of Justice

Environment and Natural Resources Division

DJ # 90-11-6-17575

950 Pennsylvania Ave., NW
Washington, DC 20530

Telephone (202) 514-2686
Facsimile (202) 514-8865

October 11, 2005

APPROVAL MEMORANDUM

To: Letitia J. Grishaw, Section Chief
Environmental Defense Section

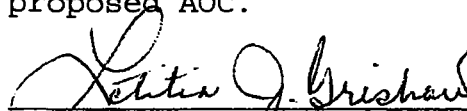
From: Matthew R. Oakes, Trial Attorney
Environmental Defense Section

Re: Proposed Administrative Settlement in In re RRG/Clayton
Chemical Co. Superfund Site, Sauget, Illinois (N.D.
Ill.).

SUMMARY AND RECOMMENDATION

I seek your approval to enter into an Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") resolving potential claims against the United States under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq.. Pursuant to the AOC, the United States would pay \$1,200 to resolve the federal PRP liability of an EPA regional laboratory. The proposed consent decree is fair and reasonable. The EPA concurs in the proposed settlement. Accordingly, I recommend that you approve federal PRP payment in the proposed AOC.

APPROVED:


SECTION CHIEF

DISAPPROVED:

SECTION CHIEF

DATE:

10/14/05



"Oakes, Matthew (ENRD)"
<MOakes@enrd.usdoj.gov>

10/07/2005 01:34 PM

To

Subject Email form Region 7

Hi Tom,

The letter from Region 7 is attached. I also received your consent email from this morning, and I've forwarded the AOC settlement package on to my supervisor for final approval. I'll let you know as soon as it is approved.

Thanks,

-Matt



<<4059_001.pdf>> 4059_001.pdf

United States Environmental Protection Agency
Region 7
Office of Regional Counsel
901 North 5th Street
Kansas City, Kansas 66101

Date:

10-7

Addressee:

Matt Dakes

Subject:

Clayton Chemical

Sender:

Cheryl McCinski

Office of Regional Counsel
Direct Dial (913) 551-7
Regional Office 1-800-223-0425
Facsimile (913) 551-7925

Number of pages (including cover sheet): 2

CONFIDENTIALITY NOTE

The information contained in this facsimile may be confidential or legally privileged. If you are not the individual named above as the intended recipient of this facsimile, please notify the sender immediately at 1-800-223-0425.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

SENT BY FAX AND REGULAR MAIL

October 7, 2005

Matthew R. Oakes
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 23986 Suite 800
Washington, D.C. 20026-3986

RE: Clayton Chemical Site, Sauget, Illinois

Dear Mr. Oakes:

We have been informed by you and by Tom Turner, an attorney for U.S. EPA, Region V that the Region VII Laboratory is responsible for 312 gallons of waste which were generated in 1993 and 1997 and were disposed of at the above-named site. This information was derived from the PRP search report performed by Science Applications International Corporation; we have received a copy of the spreadsheet attributing waste to many PRPs, including our Laboratory. We have also received a copy of the proposed settlement in this case, an Administrative Settlement Agreement and Order on Consent for Removal Action which provides a covenant not to sue to U.S. EPA, Region VII as the Settling Federal Agency upon its payment of response costs. We understand from your correspondence that the Region VII share is \$1200.

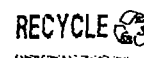
On behalf of Region VII, I concur in this settlement. Further there is no legally available appropriation that can be used to satisfy the settlement amount and therefore I understand that this amount will come from the judgment fund. Please call me if you have need any further information. I can be reached at 913-551-7733.

Your truly,

A handwritten signature in dark ink, appearing to read "Cecilia Tapia", written over a circular stamp.

Cecilia Tapia
Director, Superfund Division

cc: Tom Turner, EPA Region V



APPENDIX A

FINAL REMOVAL ACTION WORK PLAN